Supreme Court, U.S.
FILED

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No.

In the

SUPREME COURT OF THE UNITED STATES

WILLEM C. ONINK and MARSHA ONINK,

Petitioners,

v.

SAMUEL DUKE CARDELUCCI,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENTAL APPENDIX
TO PETITION FOR
WRIT OF CERTIORARI

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re SAMUEL DUKE CARDELUCCI, Debtor.	Case No: CV 00-01990 DDP Adversary Case No. SA 93-14797 RA
WILLEM and MARSHA ONINK, Appellants. v. SAMUEL DUKE CARDELUCCI, Respondent.	**ORDER AFFIRMING DECISION OF UNITED STATES BANKRUPTCY COURT** [Appeal filed on 5-1-00]

This matter is before the Court on an appeal from a decision by the United States Bankruptcy Court. The matter was taken under submission without oral argument. After reviewing and considering the materials submitted by the parties, the Court affirms.

I. Background

The appellants in this matter are Willem and Marsha Onink. The respondent and debtor is Samuel Duke Cardelucci. The Oninks and Cardelucci each own and operate several rubbish companies in Southern California.

In the late 1980s, disputes developed between the parties regarding pricing practices in Riverside County. In January 1993, a state trial court found that Cardelucci and his two wholly-owned companies, National Environmental Waste Corporation ("NEWCO") and International Rubbish Service, Inc. ("IRS"), were jointly and severally liable to the appellants for unfair trade practices. (Appellants' Excerpts at 5-7.) In March 1993, the state court entered judgment in the amount of $5,423,825.50, plus interest at the rate of 10 percent per annum from the date of verdict. (Id. at 7.)

On May 3, 1993, Cardelucci filed a voluntary petition for relief under Chapter 11 in United States Bankruptcy Court. (Id. at 10.) The parties stipulated to modify the automatic stay pending appeal of the state court judgment. (Id. at 43-46.) NEWCO and IRS also filed a petition for Chapter 11 relief in May 1993, which was confirmed in June 1994. The NEWCO/IRS plan is not at issue in this appeal. However, payments of more than $3,000,000 under the NEWCO/IRS plan have reduced the base amount of the Oninks' claim. (Id. at 162.)

Meanwhile, Cardelucci pursued appeals of the state court judgment. In February 1996, the California Court of

Appeal affirmed the judgment as to liability, but remanded for recalculation of damages. (Id. At 118-38.) In June 1999, on a second appeal, judgment was affirmed in the modified amount of $5,273,147.50. (Id. At 139-59.)

On September 30, 1999, Cardelucci filed a Modification of Fourth Amended Plan of Reorganization. (Appellee's Excerpts at 17.) The plan provided for payment of the Oninks' claim in full with post-confirmation interest at the rate of five percent per annum. (Id. At 17-18.)

On December 29, 1999, the matter came before the United States Bankruptcy Court on a confirmation hearing and on the appellants' motion for post-petition, pre-confirmation (or "gap") interest. The parties agreed that the Oninks were entitled to gap interest, but disagreed as to the applicable rate of interest. Cardelucci argued that interest should accrue at the applicable federal judgment rate of 3.25 percent. (Id. At 4.) The Oninks argued that, under California law, the applicable rate should be 10 percent. (Appellants' Excerpts at 168).

The Bankruptcy Court, relying primarily on In re Beguelin, 220 B.R. 94 (9th Cir. B.A.P. 1998), found that the federal judgment rate applied. (Id. At 250-51, 289, 301.) After agreeing to additional minor modifications, the Oninks withdrew their objection to the plan without prejudice to their right to appeal the interest rate determination. (Id. At 302-05.) The Bankruptcy Court then ordered the plan confirmed.

The Oninks now appeal. The issues presented are: (1) whether the Bankruptcy Court erred in determining that the applicable post-petition, pre-confirmation interest rate was the federal judgment rate; and (2) whether application of the federal judgment interest rate violates substantive due process.

II Discussion

A. Legal Standard

Statutory interpretation is a question of law subject to de novo review. See In re Beguelin, 220 B.R. at 97 (citing In re Anderson, 209 B.R. 76, 77 (6th Cir. B.A.P. 1997)). The parties agree that the standard of review in this appeal is de novo. (Appellants' Opening Brief at 3: Appellee's Brief at 1.)

B. Whether the Bankruptcy Court Erred in Applying Federal Judgment Interest Rate

The Oninks first argue that the Bankruptcy Court erred in applying the federal judgment interest rate to their claim. As a general rule, creditors are not entitled to post-petition interest on their bankruptcy claims. See 11 U.S.C. § 502(b)(2); In re Kentucky Lumber Co., 860 f.2d 674, 676 (6th Cir. 1988). However, in a Chapter 7 liquidation case, an unsecured creditor is entitled to "payment of interest at the legal rate from the date of the filing of the petition" prior to any distributions to the debtor. 11 U.S.C.§ 726(a)(5). In a Chapter 11 case, a creditor must receive at least as favorable treatment as that accorded in a Chapter 7 case. See 11 U.S.C.§ 1129(a)(7); In re Beguelin, 220 B.R.

at 98-99. Accordingly, where the estate of the debtor is solvent in a Chapter 11 case, post-petition interest must be awarded at the "legal rate" pursuant to Section 726. See In re San Joaquin Estates, Inc., 64 B.R. 534, 536 (9th Cir. B.A.P. 1986).

The Bankruptcy Code does not define the term "interest at the legal rate." As noted by the Ninth Circuit Bankruptcy Appellate Panel, courts are divided over whether to interpret this term under the "state law approach" or the "federal judgment rate approach." See generally In re Beguelin, 220 B.R. at 99.

Under the state law approach, if an express contractual agreement between the debtor and creditor provides for the payment of interest, the contract rate is the "legal rate." See, e.g., In re Schoeneberg, 156 B.R. 963, 971-72 (Bankr. W.D. Tex. 1993). Alternatively, in the absence of a contract, the legal rate is that provided to creditors by applicable state statute. See, e.g., id.; In re Shaffer Furniture Co., 68 B.R. 827, 831 (Bankr. E.D. Pa. 1987), abrogated by In re Chiapetta, 159 B.R. 152 (Bankr. E.D. Pa. 1993). Here, there is no applicable contract between the parties. The Oninks argue that, under California law, the applicable state judgment rate would be 10 percent.

Under the federal judgment rate approach, the "legal rate" is that established by 28 U.S.C.§ 1961. See, e.g., In re Dow Corning Corp., 237 B.R. 380 (Bankr. E.D. Mich. 1999); In re Melenyzer, 143 B.R. 829, 830 (Bankr.

W.D. Tex. 1992); In re Godsey, 134 B.R. 865, 867 (Bankr. M.D. Tenn. 1991). Section 1961 provides that "[i]nterest shall be allowed on any money judgment in a civil case recovered in a district court," calculated from the date of judgment at an indexed rate. See 28 U.S.C. § 1961(a). Here, due to the date of the filing of the bankruptcy petition, the applicable federal judgment rate would be 3.25 percent. (Appellee's Excerpts at 9.)

In Beguelin, as here, the Ninth Circuit Bankruptcy Appellate Panel addressed the appropriate rate of post-petition interest on a state court judgment by a single creditor against a solvent debtor. See In re Beguelin, 220 B.R. at 96-97. After discussing the conflicting approaches, the court held that the appropriate measure of interest under Section 726 was the federal judgment rate. See id at 100. The court approved cases relying on "the use of the federal judgment rate as a means of ensuring fairness, equality, and predictability in the distribution of interest on creditors' claims, and on the use of a federal law to decide a federal issue." Id. (Discussing In re Melenyzer). The court also noted the "practicality and cost-effectiveness" of allowing the bankruptcy trustee to apply a single rate of interest to all claims. See id. At 101.

Here, the parties dispute whether interest should be applied under the state law approach or the federal judgment rate approach. The Bankruptcy Court expressed some discomfort at the fact that, administration of this estate, the disparity between the two approaches was

significant. (App. At 290-92.) However, citing the reasoning of In re Beguelin, the court held that the federal judgment rte applied. (Id. At 289,301.)

The Oninks now ask this Court to reverse. The Oninks note that, as a decision of the Bankruptcy Appellate Panel, In re Beguelin is not binding on this Court. See Bank of Maui v Estate Analysis, Inc., 904 F. 2d 470, 471 (9th Cir.1990). The Oninks also argue that the concerns underlying the federal judgment rate approach are not relevant where, as here, the debtor is solvent and there are sufficient funds to pay all creditors' claims. Finally, the Oninks argue that it is error to apply the federal judgment rate in disregard of the equities of the case, where it would produce a windfall to the debtor.

Cardelucci responds that, contrary to the Oninks' contention, courts frequently apply the federal judgment rate to solvent estates. Cardelucci argues that post-petition interest serves the same function as post-confirmation interest, which is a procedural matter governed by federal law. See In re Dow Corning, 237 B.R. at 405 (collecting cases). Cardelucci also argues that reliance on equitable concerns is misplaced because, where the estate is solvent, an award of post-petition interest is not discretionary but mandatory.

After considering these arguments, the Court affirms the decision of the Bankruptcy Court. The Court finds the reasoning of the Beguelin decision persuasive, and agrees that concerns of fairness, predictability, and

practicality support the use of the federal judgment rate in bankruptcy cases. The Court also agrees that post-petition interest is a federal issue, that should be governed by federal rather than state law. The Court notes that the federal judgment rate approach is endorsed by a number of authorities in the field. See, e.g., 6 Collier on Bankruptcy ¶ 726.02(5) (15th ed. rev. 1997); 3 Norton Bankruptcy Law & Practice 2d § 73:7 n.55 (1997 & Supp. 2000). Finally, the Court disagrees that the interpretation of the statutory term "legal rate" should turn on whether the debtor's estate is solvent. In a Chapter 11 case such as this one, for example, solvency is generally a predicate to any award of post-petition interest.

Accordingly, the Court agrees with the Bankruptcy Court that the federal judgment rate is the appropriate measure of post-petition interest in this case.

C. Whether Imposition of the Federal Judgment Interest Rate Violates Substantive Due Process

The Oninks next argue that application of the federal judgment rate in this case violates substantive due process. Specifically, the Oninks argue that application of the federal judgment interest rate in this case is arbitrary and unreasonable, because it would produce an unjustified windfall to the debtor. Substantive due process requires only that economic regulations be rationally related to a legitimate legislative purpose. See Duke Power Co. v Carolina Environmental Study Group ,Inc. 438 U.S. 59, 83

(1978); Levald, Inc. v City of Palm Desert, 998 F.2d 680,690 (9th Cir. 1993). For the reasons discussed above, the Court finds that the federal judgment rate approach is rationally related to the legitimate concerns of fairness, predictability, and practicality. Accordingly, the Court rejects the Oninks' substantive due process argument.

III Conclusion

For the reasons set forth above, the order of the Bankruptcy Court is affirmed.

IT IS SO ORDERED.

Dated: 8-7-00

DEAN D. PREGERSON
United States District Judge

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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTA ANA DIVISION

In re SAMUEL DUKE CARDELUCCI, Debtor.	Case No. SA 93-14797 RA Chapter 11 ORDER ON MOTION FOR ORDER RE POST-PETITION INTEREST Hearing Date Date: December 29, 1999 Time: 8:45 a.m. Ctrm: 6C

The Motion of Willem and Marsha Onink for an order re post-petition interest came on regularly for hearing on the captioned ate and time before the Honorable Robert W. Alberts, United States Bankruptcy Judge. The Oninks appeared through their attorney of record, Thompson & Colgate, by John A. Boyd and the Law Offices of Fred J. Knez by Fred J. Knez. The Debtor-in-Possession and Respondent appeared through his attorney of record, Burd &

Naylor, by William M. Burd.

Upon consideration of all papers, pleadings and files of record and the argument of counsel, the Court made its findings of fact and conclusions of law on the record. In accordance therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that the Oninks are entitled to post-petition interest on their judgment and the California State Court should appropriately determine the date of commencement of interest on the revised judgment. The applicable interest rate for distributions on such judgment in this Chapter 11 case is the Federal judgment rate, rather than the state judgment rate.

February 1, 2000

ROBERT W. ALBERTS
United States Bankruptcy Judge